

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

MARK W. CLUTTER,

Plaintiff,

v.

**CIVIL ACTION NO. 3:05CV62
(BROADWATER)**

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, entered May 24, 2006. The parties did not file objections to the Report and Recommendation.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.


For the reasons stated in the Magistrate Judge's Report and Recommendation, the Court **ORDERS** Plaintiff's Motion for Summary Judgment (Document No. 9) be **DENIED** and that the Commissioner's Motion for Summary Judgment (Document No. 11) be **GRANTED** because the Administrative Law Judge (ALJ) was substantially justified in his decision. Specifically, the ALJ properly evaluated and weighed the opinion of Claimant's treating physician.

It is further **ORDERED** that this action be **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the Plaintiff and all counsel of record herein.

DATED this 1st day of September 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE